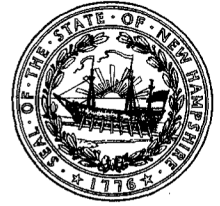




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

April 8, 2005

Munce's Superior, Inc.
Attn: Robbie P. Munce
620 Main Street
Gorham, NH 03581

**NOTICE OF DECISION
ADMINISTRATIVE FINE
DOCKET NO. AF 02-031**

Dear Mr. Munce:

By Notice of Proposed Administrative Fine No. AF 02-031 issued September 27, 2002, the New Hampshire Department of Environmental Services Waste Management Division ("DES") sought administrative fines totaling \$2,500 against Munce's Superior, Inc. for alleged violations of RSA 146-A, by failing to remove accumulated stormwater in ensure that sufficient containment volume is always available to contain a release from the largest tank being contained at aboveground storage tank system site number 198905027 located at Wildcat Mountain Maintenance Garage in Jackson, NH.

Pursuant to RSA 146-A:15, and based on my review of the evidence presented at the hearing held on this matter on March 28, 2005, I have concluded that a fine of \$2,500 is justified as set forth below:

This decision is based on the following findings and conclusions:

FINDINGS OF FACT

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Munce's Superior, Inc., is a corporation registered to do business in New Hampshire having a mailing address of 620 Main Street, Gorham NH 03581.
3. Munce's Superior, Inc., is the owner of two 10,000-gallon diesel and one 550-gallon gasoline aboveground storage tank systems ("AST systems") located at Wildcat Mountain in Jackson, New Hampshire and further identified by the DES site number 198905027 and the AST identification number 0000074 ("the Facility").
4. An inspection by DES personnel of the facility on April 29, 2002, revealed that the spill containment for the AST systems contained water and that an oil sheen was observed on this water. Division's Hearing Exhibit 1 and testimony of Mark Ledgard, DES Oil Remediation Subsystem Supervisor.

5. DES notified Munce's Superior, Inc., of the deficiencies identified above in a Letter of Deficiency WMD #01-1 dated May 10, 2002 (the "LOD"). In the LOD Munce's Superior, Inc., was instructed to immediately take appropriate measures, described in the LOD, to remove water from the spill containment, and that this shall include proper testing and treatment prior to discharge. The LOD gave Munce's Superior, Inc., 30-days from receipt of the LOD to submit written documentation that the water had been properly removed in order to avoid enforcement action. Division's Hearing Exhibit 2.
6. An inspection, by personnel from the United States Forest Service, of the facility on June 13, 2002, revealed that the spill containment for the AST systems contained water to within a foot of the top of the containment. Division's Hearing Exhibit 3.
7. An inspection, by personnel from the Wildcat Mountain Ski Area, of the facility on July 18, 2002, revealed that the spill containment for the AST systems contained water to within 5-inches of the top of the containment. Division's Hearing Exhibit 4.
8. An inspection by DES personnel of the facility on July 29, 2002, revealed that the spill containment for the AST systems contained water to within 6-inches of the top of the containment and that oil sheen was observed on this water. Furthermore, the 550-gallon gasoline tank had floated and was listing almost 90-degrees. Division's Hearing Exhibit 5 and testimony of Lynn Woodard.
9. DES further notified Munce's Superior, Inc., of the continuing deficiencies identified above in a letter dated August 6, 2002. In the letter Munce's Superior, Inc., was instructed to immediately take appropriate measures, as described in the LOD, to remove water from the spill containment, and that this shall include proper testing and treatment prior to discharge. The letter also notified Munce's Superior, Inc., of impending enforcement action. Division's Hearing Exhibit 6.
10. On September 27, 2002, DES issued a Notice of Proposed Administrative Fine No. AF 02-031 ("the Notice") to Munce's Superior, Inc., seeking fines totaling \$2,500 for violations of statutes and rules governing aboveground petroleum storage tank facilities.
11. Specifically, the Notice cited Munce's Superior, Inc., for violating Env-Wm 1402.33 by failing to remove accumulated stormwater to insure that sufficient containment volume is always available to contain a release from the largest tank being contained. For this violation, Env-C 615.04(n) specifies a fine of \$500 per requirement that is not met; a fine of \$2,500 is being sought for the five months of April, May, June, July, and August 2002.
12. DES notified Mr. Robbie Munce in a letter dated February 8, 2005 that a hearing in this matter had been rescheduled, at his request, for March 28, 2005, at 2:30 P.M. at 29 Hazen Drive, in Concord, NH.

13. Mr. Robbie P. Munce acknowledged in testimony that he was aware of the alleged violations, that he took steps to correct the situation during the summer of 2002, and that he didn't think that the problem was urgent because the tanks were empty.

Conclusions Of Law

1. RSA 146-A authorizes DES to minimize contamination of the waters and land of the state due to improper storage and handling of petroleum by establishing requirements for the operation of aboveground petroleum storage facilities. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Administrative Rules Env-Wm 1402 to implement this program.
2. RSA 146-A:15 authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-A, including any rule adopted pursuant thereto. Pursuant to RSA 146-C:15, the Commissioner of DES has adopted Env-C 615 to establish the schedule of fines for such violations relating to aboveground storage tanks.
3. The AST systems at the Facility are subject to the requirements of RSA Chapter 146A and NH Administrative Rules Env-Wm 1402.
4. Env-Wm 1402.33 requires that stormwater which collects and is retained within a secondary containment area shall be removed by a manually-activated pump or siphon, or a gravity drain pipe. Accumulated stormwater shall be drained as soon as practical and frequently enough to ensure that sufficient containment volume is always available to contain a release from the largest tank being contained.
5. Munce's Superior, Inc. violated Env-Wm 1402.33 by failing to remove accumulated stormwater to ensure sufficient containment volume during the months of April, May, June, July, and August 2002.
6. A fine in the total amount of \$2,500 is reasonable and supported by the evidence and the applicable law and rules.

The \$2,500 fine shall be paid within 30 days of the date of the decision. Fine payments shall be by certified check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

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Notice of Decision
April 8, 2005
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COMMISSIONER OF ENVIRONMENT SERVICES

By:

 **COPY**

Michael J. Walls, Presiding Officer

cc: Michael P. Nolin, Commissioner
Harry T. Stewart, P.E., Director, Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, DES Legal Unit
Lynn Woodard, DES WMD
Public Information Officer, DES PIP

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

29 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99